IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5637 OF 2005

The State of Maharashtra.... ... Applicant.

Versus

Prakash Shivaji More.... ..... Respondent.

Mrs. M.H. Mhatre, APP for the Applicant/State.
None for the Respondent.

CORAM : D. B. BHOSALE, J.

DATED : 3RD JULY, 2006.

P.C.:

Heard learned APP for the Applicant / State.

2. This is an application under Section 378(3) of the Criminal Procedure Code seeking leave to file appeal against the Judgment and Order dated 3rd February, 2005 rendered by the 2nd Additional Sessions Judge, Sangli, in Criminal Appeal No.13 of 2001 dismissing the case against the Respondent / Accused, who was charged of the offence punishable under Sections 304-A and 286 of the Indian Penal Code.

3. I have perused the Judgment. The son of the complainant Vishal died in an incident that occurred during the marriage ceremony being performed on 22nd May, 1998 at 3.00 p.m.. It is the case of the prosecution that at the relevant time the accused was bursting apatbars (a kind of crackers) which hit Vishal. He was immediately taken to the hospital but before his admission he succumbed to the injuries. The trial court convicted the accused on the basis of the evidence of two eye witnesses, namely, Sudhakar and Netaji. The allegation was that an 'Apatbar', which explodes when hit against hard substance, was thrown by the accused, that hit Vishal on his head. The medical evidence, however, does not support the allegation. In the circumstances, the appeal Court held that possibility of Vishal stumbling while running cannot be ruled away. The view taken by the appeal court is reasonably possible view. The F.I.R. was lodged after two days. Evidence of the eye witnesses, Sudhakar and Netaji, was not found sufficient to convict as observed by the appeal court in para 13 of the appeal court judgment. Considering the reasons recorded by the appeal court on appreciation of the evidence on record, the impugned judgment cannot be said to be perverse merely because

the other view, on the basis of the evidence on record was possible. That by itself cannot be a ground to entertain the application seeking leave to appeal against the order of acquittal. The application for leave to appeal is rejected.

Sd/-

(D. B. BHOSALE, J.)